

1931

*Present: Lyall Grant J.*FERNANDO *v.* PEIRIS.227—*P. C. Colombo, 21, 223.**Appeal from acquittal—Question of fact—Duty of Appellate Court.*

Where an appeal is taken on the facts from an acquittal, the Appeal Court, before it allows the appeal, must be satisfied that no other conclusion was reasonably possible but that the accused was guilty, or that the Magistrate did not apply his mind to the whole evidence in the case.

A PPEAL from an acquittal by the Police Magistrate of Colombo.

M. F. S. Pulle, C.C., for the Attorney-General.

Clement de Jong, for accused, respondent.

May 25, 1931. LYALL GRANT J.—

This is an appeal by the Solicitor-General against an order of acquittal in a private prosecution.

This power of appeal in private cases was conferred on the Attorney-General by an amendment to the Criminal Procedure Code contained in Ordinance No. 19 of 1930, which came into force last November.

By section 393, the Solicitor-General may, by direction of the Attorney-General either general or special, exercise all or any of the powers conferred on the Attorney-General by the Ordinance.

The petition in the present case does not show that the Solicitor-General has received from the Attorney-General either special or general directions enabling him to appeal in this case, but no objection has been raised to the appeal on this score.

I think, therefore, that I am justified in assuming that the Solicitor-General has received the necessary powers. I would however direct the notice of the Crown authorities to the desirability of regularizing this procedure. If there is a general direction it would be desirable that it should be deposited with the Registrar of the Supreme Court.

This matter was not discussed in Court and it is not necessary to refer to it further as I have come to the conclusion on other grounds that the appeal cannot succeed.

An appeal from an acquittal is a remedy which has no place in most parts of the British Empire. The general rule is that if a person has been fairly and properly tried and acquitted, he ought not to be put in jeopardy a second time for the same offence.

Section 336 of our Code allows an appeal, in case of acquittal, to the Attorney-General or with his sanction, and the recent amendment allows in private prosecutions a direct right of appeal to the Attorney-General, in addition to the right of appeal with his sanction.

These provisions create in Ceylon a more extended right of appeal against acquittal with a corresponding greater limitation of the right to liberty of the subject than in any part of the British Dominions with whose laws I have any acquaintance.

The need for the existence of these powers is a matter for the Legislature, but it is for the Appeal Court to decide on what grounds it will allow such appeals. In the present case the appeal is on the facts.

It is obviously not sufficient that the Court should think that there is material on which another Magistrate might come to the conclusion that the accused was guilty. It must, I think, be satisfied that no other conclusion was reasonably possible but that the accused was guilty or that the Magistrate did not apply his mind to the whole evidence in the case.

I do not think that this could be said here. The Magistrate has correctly said that the main evidence is that of the girl who has varied her statements on essential particulars from time to time.

It is not possible here to say that the Magistrate has not duly exercised his discretion or that he has exercised it unreasonably, and, in these circumstances, I do not think that his finding of acquittal can be set aside.

Appeal dismissed.

